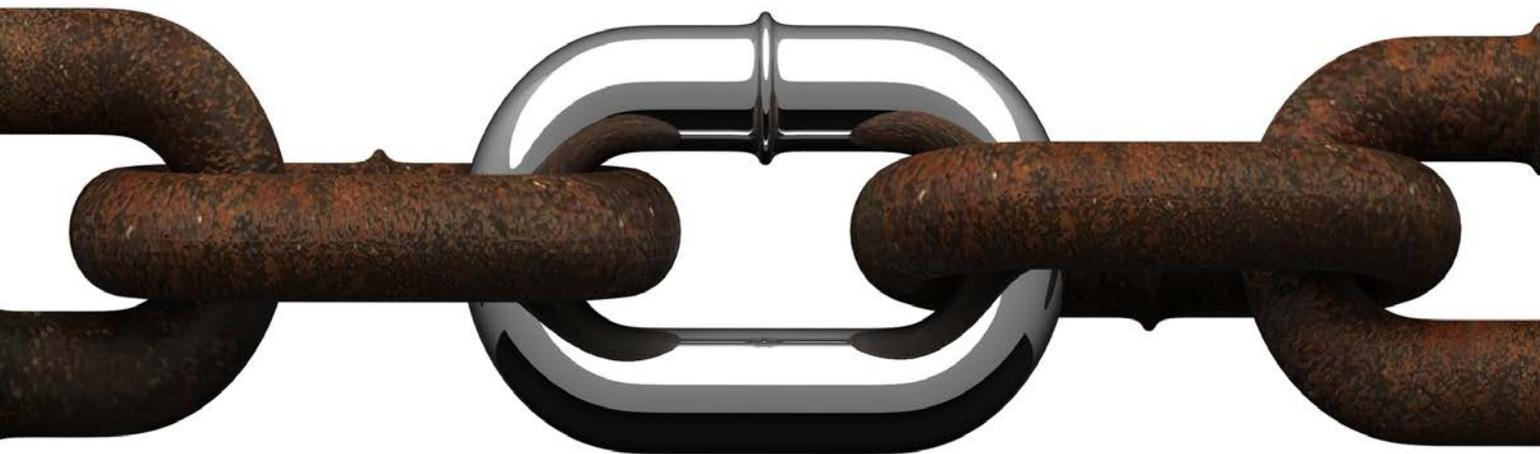


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# Ecommerce and IP owners: the challenges

Like the physical world, the internet requires strict vigilance and appropriate strategies, say Manisha Singh and Zoya Nafis of LexOrbis

India has transcended into the digital age, allowing the internet to become an integral part of its citizens' lives. Easy accessibility and operation have made everything a click away in India. This has also paved the way for the rise of commercial activities online, marking the emergence of ecommerce.

There is no standard definition for the term ecommerce. It is generally used in the sense of denoting a method of conducting business through electronic means rather than through traditional physical means. Electronic means here include 'click and buy' methods using computers, mobile devices or smartphones.

It covers all business conducted by computer networks, and not only includes sale but also an efficient delivery system, proper payment facilitation and effective supply chain and service management.

## Scrutinising the major issues

The internet has its own complexities and involves a lot of legal issues—particularly around intellectual property. Trademarks and domain names are a top priority for ecommerce participants. When choosing a name for an ecommerce website, it is important to find out whether there are any trademarks registered for such a name. Domain names that are similar to any registered trademark, or which are deceptively similar, can give rise to disputes.

The Internet Corporation for Assigned Names and Numbers (ICANN) is the organisation in charge of the domain name system, and it has policies in place that govern the registration of domain names, which registries have to adhere to and implement across TLDs.

Ecommerce websites are often designed and created by third-party designers and developers. Since these are commissioned works, website owners usually think that they own the related IP. However, unless agreements between the parties specifically stipulate this, there can be serious ownership issues. Therefore, it is important for website holders to display disclaimers clearly addressing ownership and also keep an eye on any unauthorised use of their content.

The sale of counterfeit goods on ecommerce platforms is a common issue. Their popularity makes it possible for infringers to sell fake products online without much hassle. Of course, fakes adversely affect the goodwill of a brand and so must be discouraged at every stage and struck down as soon as possible.

The practice of deceptively using another brand's trademark as website meta tag is prevalent these days and constitutes trademark infringement. Meta tags are keywords or phrases embedded in a website's HTML code, which are invisible to visitors of the website but are read by search engines.

“ The application of the law has been very effective. Sales of video content doubled after the introduction of the anti-piracy law ”

Meta tags allow website developers to provide information to search engines, making searching for websites while enhancing traffic for a particular website. However, instead of using terms that properly describe the site, some developers place the names or trademarks of competing brands in their meta tags.

Another issue that comes up during trademark infringement cases involving ecommerce platforms is determining the jurisdiction for identifying liability. In India, an action must be filed at the forum that has jurisdiction to entertain the suit. The general rule of jurisdiction stipulates that a suit is best filed where the defendant is based, or where the cause of action arises, and Section 20 of the Code of Civil Procedure (CPC) provides for it.

But Section 134(2) of the Trademarks Act and Section 62 of the Copyright Act provide an exception to that provision of the CPC and give rights holders the option to file suit in a court in the jurisdiction where the rights holder is based, irrespective of where the defendant is based or where the cause of action arose. While deciding the case of World Wrestling Entertainment v Reshma Collection in 2013, the Delhi High Court ruled that in cases of

copyright and trademark infringement, the plaintiff can institute where it sells its products or services.

Like the physical world, the internet requires strict vigilance and appropriate strategies. Website owners should register all of their IP assets and all agreements must be precisely drafted, clearly taking ownership in to account. While developing an ecommerce website, the protection of trade secrets must be paid heed to and also proper disclaimers wherever necessary must be given as many people assume that material on websites can be used freely.

There is no such specific legislation to govern the ecommerce segment. Therefore the present laws must be interpreted in a way to avoid the legal conflicts as much as possible. Also, sharp risk management strategies must be framed to combat the infringement on this space. **IPPro**



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